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6 **BEFORE THE INSURANCE COMMISSIONER**
7 **OF THE STATE OF WASHINGTON**

8 In the Matter of

NO. G 02-45

9 THE APPLICATION REGARDING
10 THE CONVERSION AND
11 ACQUISITION OF CONTROL OF
PREMERA BLUE CROSS AND
ITS AFFILIATES

OIC STAFF'S RESPONSE TO
PREMERA'S PROPOSED ORDER
REGARDING THE *IN CAMERA*
PRIVILEGE REVIEW

12 The Office of the Insurance Commissioner's Staff ("OIC Staff"), respectfully
13 files this Response to Premera's Proposed Order Regarding the *In Camera* Privilege
14 Review.

15 The OIC Staff does not object *in general* to Premera's Proposed Order
16 Regarding the *In Camera* Privilege Review, however, the OIC Staff has the following
17 comments regarding some of the language proposed by Premera.

18 1. Specific word changes:

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- 20 • **Paragraph 1.** The OIC Staff requests the Commissioner change the last part
21 of the first sentence as noted in the brackets as follows: "...Premera's
22 privilege log[, a copy of which was provided to the Special Master on June
30, 2003.]"
 - 23 • **Paragraph 3:** The OIC Staff requests the Commissioner add to the last part
24 of the second sentence the words noted in the brackets: "... under the work
product doctrine[, or should be disclosed for some other reason. Judge

Finkle may decide to redact portions of documents, allowing the remainder of the document to be disclosed.]”

- **Paragraph 4(a):** The OIC Staff requests the Commissioner change “as unprivileged and unprotected “to” as unprivileged [or] unprotected.”
- **Paragraph 6:** The OIC Staff requests the Commissioner add to the last part of the first sentence the words noted in the brackets: “...and work product claims [in the context of this proceeding and the nature of the transaction proposed by Premera in its Form A.]”

2. Substantive changes.

- **Paragraph 4.** The OIC Staff objects to the last two sentences of this paragraph and requests the Commissioner strike them and replace with the following sentences:

“Judge Finkle will determine whether the dispute is substantial enough to delay triggering the commencement of the case schedule. In that instance, the trigger date would not be initiated until the dispute is resolved.”

Rationale: If Premera disputes Judge Finkle’s determination as described in paragraph 4(b), then Premera should appeal to the Commissioner as set forth in paragraph 4 of the Commissioner’s Seventh Order. If the dispute regards a substantial amount of documents, the trigger date for the commencement of the case schedule needs to be adjusted accordingly. Additionally, to require a subpoena of records already at issue in discovery would be inappropriate. The Commissioner has already rejected a subpoena option in this matter.

- **Paragraph 5.** The OIC Staff objects to the last sentence of this paragraph and requests the Commissioner strike it. Rationale: The parties agree that any *in camera* review by Judge Finkle does not constitute waiver of privilege and this sentence is redundant in that respect. Additionally, the language is overbroad in that the Commissioner cannot deny any party the ability to *seek* access, even if that access is subsequently denied.

- **Paragraph 6.** The OIC Staff requests that the Commissioner add the following language between the second and third sentence:

“During the *in camera* review, Judge Finkle will designate each document into one of the following categories: 1) not privileged; 2) privileged and not relevant to the States’ review of the

1 conversion proposal; 3) privileged and relevant; or 4) privileged
2 and relevant and disclosable in part with redaction. Judge Finkle
3 will then provide this list to the parties upon completion of his *in*
camera review.”

4 Rationale: This categorization will substantially assist the parties in
5 determining what information was withheld due to privilege and how to take
6 that into consideration when drafting reports.

7 RESPECTFULLY SUBMITTED this 23rd day of July, 2003.

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9 OFFICE OF INSURANCE COMMISSIONER
10 STATE OF WASHINGTON
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